

LEXISNEXIS' CODE OF FEDERAL REGULATIONS  
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\*\*\* THIS SECTION IS CURRENT THROUGH THE JUNE 18, 2009 ISSUE OF \*\*\*  
\*\*\* THE FEDERAL REGISTER \*\*\*

TITLE 47 -- TELECOMMUNICATION  
CHAPTER I -- FEDERAL COMMUNICATIONS COMMISSION  
SUBCHAPTER C -- BROADCAST RADIO SERVICES  
PART 76 -- MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE  
SUBPART H -- GENERAL OPERATING REQUIREMENTS

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47 CFR 76.309

§ 76.309 Customer service obligations.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (c) of this section against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

(b) Nothing in this rule should be construed to prevent or prohibit:

- (1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in paragraph (c) of this section;
- (2) A franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in paragraph (c) of this section and are contained in current franchise agreements;
- (3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or
- (4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the standards set forth in paragraph (c) of this section.

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability --

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an

automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers --

(i) Refunds -- Refund checks will be issued promptly, but no later than either --

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits -- Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

#### (4) Definitions --

(i) Normal business hours -- The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

(ii) Normal operating conditions -- The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(iii) Service interruption -- The term "service interruption" means the loss of picture or sound on one or more cable channels.

Note to § 76.309: Section 76.1602 contains notification requirements for cable operators with regard to operator obligations to subscribers and general information to be provided to customers regarding service. Section 76.1603 contains subscriber notification requirements governing rate and service changes. Section 76.1619 contains notification requirements for cable operators with regard to subscriber bill information and operator response procedures pertaining to bill disputes.

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SUBPART T -- NOTICES

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47 CFR 76.1602

§ 76.1602 Customer service -- general information.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

(b) Effective July 1, 1993, the cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- (1) Products and services offered;
  - (2) Prices and options for programming services and conditions of subscription to programming and other services;
  - (3) Installation and service maintenance policies;
  - (4) Instructions on how to use the cable service;
  - (5) Channel positions of programming carried on the system; and
  - (6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.
- (c) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the cable system operator, including the address of the responsible officer of the local franchising authority.

**HISTORY:**

[65 FR 53610, 53617, Sept. 5, 2000]

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47 CFR 76.1603

§ 76.1603 Customer service -- rate and service changes.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

(b) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers 30 days in advance of any significant changes in the other information required by § 76.1602.

(c) In addition to the requirement of paragraph (b) of this section regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the operator need only identify for subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

(d) A cable operator shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. The notice should include the name and address of the local franchising authority.

(e) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable written means at its sole discretion.

(f) Notwithstanding any other provision of part 76 of this chapter, a cable operator shall not

be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

NOTE 1 TO § 76.1603: Section 624(h) of the Communications Act, 47 U.S.C. 544(h), contains additional notification requirements which a franchising authority may enforce.

NOTE 2 TO § 76.1603: Section 624(d)(3) of the Communications Act, 47 U.S.C. 544(d)(3), contains additional notification provisions pertaining to cable operators who offer a premium channel without charge to cable subscribers who do not subscribe to such premium channel.

NOTE 3 TO § 76.1603: Section 631 of the Communications Act, 47 U.S.C. 551, contains additional notification requirements pertaining to the protection of subscriber privacy.

(Approved by the Office of Management and Budget under control number 3060-0844)

**HISTORY:**

[65 FR 53610, 53618, Sept. 5, 2000; 66 FR 16533, 16554, Mar. 26, 2001; 66 FR 48981, Sept. 25, 2001]

47 CFR 76.1619

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47 CFR 76.1619

§ 76.1619 Information on subscriber bills.

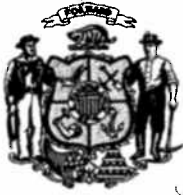
(a) Effective July 1, 1993, bills must be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(b) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.

(c) A cable franchise authority may enforce the customer service standards set forth in this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

**HISTORY:**

[65 FR 53610, 53620, Sept. 5, 2000]



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-0945/0

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2009 BILL

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1 AN ACT *to repeal* 66.0420 (2) (g), 66.0420 (3) (c), 66.0420 (7) (a) 2m., 66.0420 (7)  
2 (b) and 66.0420 (9) (b); *to renumber and amend* 66.0420 (3) (i) and 66.0420  
3 (9) (a); *to amend* 20.115 (1) (jb), 20.155 (1) (title), 20.155 (1) (g), 66.0420 (3) (a),  
4 66.0420 (3) (d) (intro.), 66.0420 (3) (d) 1., 66.0420 (3) (e) 1., 66.0420 (3) (e) 2. b.,  
5 66.0420 (3) (f) (title), 66.0420 (3) (f) 1., 66.0420 (3) (f) 2., 66.0420 (3) (f) 4.,  
6 66.0420 (3) (g), 66.0420 (3) (h), 66.0420 (3) (j), 66.0420 (5) (b) 2., 66.0420 (7) (a)  
7 1., 66.0420 (7) (em) 4., 66.0420 (7) (f), 66.0420 (8) (e), 66.0420 (10), 66.0420 (11),  
8 66.0420 (13) (a), 66.0420 (13) (c), 100.261 (3) (c), 196.44 (1) and 196.44 (2); *to*  
9 *repeal and recreate* 66.0420 (3) (i) (title), 66.0420 (3) (k) and 66.0420 (5) (c)  
10 3. a.; and *to create* 66.0420 (2) (fm), 66.0420 (3) (i) 1. to 3., 66.0420 (3) (L),  
11 66.0420 (5) (d) 3., 66.0420 (5e), 66.0420 (7) (em) 5. and 196.85 (1m) (e) of the  
12 statutes; **relating to:** the regulation of video service providers and interim



**BILL**

1 cable operators, granting rule-making authority, and making an  
2 appropriation.

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***Analysis by the Legislative Reference Bureau***

Under current law, with certain exceptions, a person may not provide video service unless the Department of Financial Institutions (DFI) has issued a video service franchise to the person. The prohibition was enacted as part of 2007 Wisconsin Act 42, which made substantial changes to the regulation of cable television service. Current law defines “video service,” in general, as cable television service, and other service comparable to programming service provided by a television broadcast station, that is provided through facilities located, at least in part, in public rights-of-way. Current law refers to a person who is granted a video service franchise as a “video service provider.” One of the exceptions to the prohibition applies to a person operating under a cable television franchise granted by a municipality before the enactment of 2007 Wisconsin Act 42. Current law allows such a person to elect to continue to provide cable television service until the franchise expires. Upon expiration of the municipally-granted franchise, the person must apply to DFI for a video service franchise. Current law refers to a person who elects to operate under a municipally-granted cable television franchise until the franchise’s expiration as an “interim cable operator.”

This bill transfers DFI’s duties regarding video service franchises and video service providers to the Public Service Commission (PSC). In addition, the bill allows the PSC to bill a franchise applicant or video service provider for the expenses incurred by the PSC regarding an application and other matters under the PSC’s jurisdiction regarding the applicant or provider. The PSC has similar authority under current law to bill a public utility for the costs incurred by the PSC in regulating the public utility.

In addition, the bill requires a video service provider to apply to the PSC to renew a video service franchise every ten years. Current law does not require renewal of a video service franchise. The PSC may not renew a video service franchise under the bill if the PSC determines that the video service provider has exhibited a pattern of noncompliance with requirements under current law relating to video service, including state consumer protection requirements, as well as regulations of the Federal Communications Commission (FCC) that are described below. Also, the bill allows the PSC to revoke a video service franchise if the PSC makes the same determination. Under current law, DFI may revoke a video service franchise if DFI determines that a video service provider fails to substantially meet a material requirement imposed by the DFI.

The bill also allows a municipality to require a video service provider that provides service in the municipality a quarterly video service fee of no more than 5 percent of the provider’s gross receipts. Under current law, under certain circumstances, a municipality may be limited to a percentage that is less than 5 percent. In addition, the bill repeals a provision created by 2007 Wisconsin Act 42

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that allows a video service provider to deduct right-of-way permit fees imposed by a municipality from any other compensation that is due to the municipality, including the video service fee.

Current law also prohibits municipalities from requiring video service providers and interim cable operators to provide monetary support for public, educational, and governmental access channels (PEG channels) after January 1, 2011. The amount of monetary support that a municipality may require before that date is generally based on the amount of support that a municipality required prior to the enactment of 2007 Wisconsin Act 42. This bill allows a municipality to require, beginning on January 1, 2011, video service providers and interim cable operators to pay a fee for the purpose of supporting PEG channels. The fee, which must be set by ordinance, may be equal to no more than 1 percent of a video service provider's or interim cable operator's annual gross receipts. The bill also makes video service providers and interim cable operators responsible for making any changes to PEG channel programming that are necessary for compatibility with their service delivery technology or protocol. Under current law, municipalities that provide PEG channel programming are responsible for such changes. The bill also requires video service providers and interim cable operators to retransmit PEG channels to subscribers with visual and audio quality and functionality that is equivalent to certain commercial channels.

Current law also requires video service providers to pay annual fees to DFI. If a video service provider has 10,000 or less subscribers, the first annual fee is \$2,000 and each subsequent fee is \$100. Current law also requires video service providers to pay a \$100 fee for notifying DFI about certain changes in information previously provided to DFI. This bill eliminates the fee for information changes, and also requires video service providers to pay annual fees to the Department of Agriculture, Trade and Consumer Protection (DATCP), rather than to DFI. Under current law, DATCP enforces certain video service consumer protection requirements. Under the bill, a video service provider with 10,000 or less in-state subscribers must pay an annual fee of \$4,500 to DATCP, and a video service provider with more than 10,000 in-state subscribers must pay an annual fee of \$50,000 to DATCP. In addition, the bill allows DATCP to adjust the amount of the fees by rule as necessary to cover administrative and enforcement costs. The bill also authorizes the creation of 5.0 FTE positions in DATCP for enforcing the video service consumer protection requirements.

> In addition, current law ~~allows~~ <sup>authorizes</sup> municipalities to require video service providers to comply, upon 90 days' advance notice, with regulations of the FCC regarding office hours and telephone availability; service installations, outages, and calls; and deadlines for refunds and service credits. However, a municipality is prohibited from requiring such compliance if more than one person offers video service in a municipality, or if a video service provider is subject to effective competition, as determined under FCC regulations. This bill eliminates the foregoing ~~prohibition~~. ~~In addition, the bill allows a municipality to require compliance with additional FCC regulations regarding all of the following: (1) providing information about products, services, channels, prices, installation and service~~

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**BILL**

maintenance policies, and billing and complaint procedures; 2) providing advance written notice about changes to rates, programming services, and channel positions; and 3) providing clear, concise, and understandable bills, itemizing bills, and responding to billing complaints. ~~2) In addition, the bill allows a municipality to~~

~~require compliance with the video service consumer protection standards enforced by DATCP.~~

Finally, the bill requires a video service provider to carry a channel designated by WisconsinEye, which operates a nonprofit, statewide public affairs channel, or a successor to WisconsinEye specified by the PSC. A video service provider must carry the channel at no cost to WisconsinEye or such a successor.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**SECTION 1.** 20.115 (1) (jb) of the statutes is amended to read:

20.115 (1) (jb) *Consumer protection, information, and education.* The amounts in the schedule for consumer protection and consumer information and education. All moneys received under ~~s.~~ ss. 66.0420 (3) (k) and 100.261 (3) (b) shall be credited to this appropriation account, subject to the limit under s. 100.261 (3) (c).

**SECTION 2.** 20.155 (1) (title) of the statutes is amended to read:

20.155 (1) (title) REGULATION OF PUBLIC UTILITIES AND VIDEO SERVICE PROVIDERS.

**SECTION 3.** 20.155 (1) (g) of the statutes is amended to read:

20.155 (1) (g) *Utility Public utility and video service provider regulation.* The amounts in the schedule for the regulation of utilities and video service providers. Ninety percent of all moneys received by the commission under s. 196.85, 196.855, or 201.10 (3) shall be credited to this appropriation. Ninety percent of all receipts from the sale of miscellaneous printed reports and other copied material, the cost of which was originally paid under this paragraph, shall be credited to this appropriation.

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**SECTION 4.** 66.0420 (2) (fm) of the statutes is created to read:

66.0420 (2) (fm) "Commission" means the public service commission.

**SECTION 5.** 66.0420 (2) (g) of the statutes is repealed.

**SECTION 6.** 66.0420 (3) (a) of the statutes is amended to read:

66.0420 (3) (a) *In general.* Except for an interim cable operator, and except as provided in ~~par. (e)~~ and sub. (11), no person may provide video service in this state unless the ~~department~~ commission has issued a video service franchise to the person and the person has provided the notice required under par. (h).

**SECTION 7.** 66.0420 (3) (c) of the statutes is repealed.

**SECTION 8.** 66.0420 (3) (d) (intro.) of the statutes is amended to read:

66.0420 (3) (d) *Application.* (intro.) An applicant for a video service franchise shall submit an application to the ~~department~~ commission that consists of all of the following:

**SECTION 9.** 66.0420 (3) (d) 1. of the statutes is amended to read:

66.0420 (3) (d) 1. The location and telephone number of the applicant's principal place of business, the names of the principal executive officers of the applicant, and the names of any persons authorized to represent the applicant before the ~~department~~ commission.

**SECTION 10.** 66.0420 (3) (e) 1. of the statutes is amended to read:

66.0420 (3) (e) 1. At the time that an applicant submits an application under par. (d), or a video service provider submits a notification regarding a modification to an application under par. (j), to the ~~department~~ commission, the applicant or video service provider shall serve a copy of the application or notification on each municipality in the video franchise area.

**SECTION 11.** 66.0420 (3) (e) 2. b. of the statutes is amended to read:

**BILL****SECTION 11**

1           66.0420 (3) (e) 2. b. If a municipality specified in subd. 2. a. has granted any  
2       cable franchise that is in effect immediately before January 9, 2008, the municipality  
3       shall, no later than 10 business days after receipt of the copy, notify the applicant in  
4       writing of the number of PEG channels for which incumbent cable operators are  
5       required to provide channel capacity in the municipality, the amount and type of  
6       monetary support for access facilities for PEG channels required of incumbent cable  
7       operators as described in sub. (7) (em) 1. to 4., and the percentage of revenues that  
8       incumbent cable operators are required to pay the municipality as franchise fees.

9           **SECTION 12.** 66.0420 (3) (f) (title) of the statutes is amended to read:

10          66.0420 (3) (f) (title) *Department Commission duties.*

11          **SECTION 13.** 66.0420 (3) (f) 1. of the statutes is amended to read:

12          66.0420 (3) (f) 1. After the filing of an application, the ~~department~~ commission  
13       shall notify the applicant in writing as to whether the application is complete and,  
14       if the ~~department~~ commission has determined that the application is not complete,  
15       the ~~department~~ commission shall state the reasons for the determination.

16          **SECTION 14.** 66.0420 (3) (f) 2. of the statutes is amended to read:

17          66.0420 (3) (f) 2. After the filing of an application that the ~~department~~  
18       commission has determined is complete, the ~~department~~ commission shall  
19       determine whether an applicant is legally, financially, and technically qualified to  
20       provide video service. If the ~~department~~ commission determines that an applicant  
21       is legally, financially, and technically qualified to provide video service, the  
22       ~~department~~ commission shall issue a video service franchise to the applicant. If the  
23       ~~department~~ commission determines that an applicant is not legally, financially, and  
24       technically qualified to provide video service, the ~~department~~ commission shall  
25       reject the application and shall state the reasons for the determination.

**BILL**

**SECTION 15.** 66.0420 (3) (f) 4. of the statutes is amended to read:

66.0420 (3) (f) 4. The ~~department~~ commission shall promulgate rules for determining whether an applicant is legally, financially, and technically qualified to provide video service.

**SECTION 16.** 66.0420 (3) (g) of the statutes is amended to read:

66.0420 (3) (g) *Effect of video service franchise.* A video service franchise issued by the ~~department~~ commission authorizes a video service provider to occupy the public rights-of-way and to construct, operate, maintain, and repair a video service network to provide video service in the video franchise area.

**SECTION 17.** 66.0420 (3) (h) of the statutes is amended to read:

66.0420 (3) (h) *Notice before providing service.* No later than 10 business days before providing video service in a municipality in a video franchise area, a video service provider shall provide notice to the ~~department~~ commission and the municipality.

**SECTION 18.** 66.0420 (3) (i) (title) of the statutes is repealed and recreated to read:

66.0420 (3) (i) (title) *Renewal; revocation.*

**SECTION 19.** 66.0420 (3) (i) of the statutes is renumbered 66.0420 (3) (i) 4. and amended to read:

66.0420 (3) (i) 4. The ~~department~~ commission may revoke a video service franchise issued to a video service provider if the ~~department~~ commission determines that the video service provider has failed to substantially meet a material requirement imposed upon it by the department. ~~Before commencing a revocation proceeding, the department shall provide the video service provider written notice of the department's intention to revoke the franchise and the department's reasons~~

**BILL****SECTION 19**

1 ~~for the revocation and afford the video service provider a reasonable opportunity to~~  
2 ~~cure any alleged violation. The department must, before revoking any video service~~  
3 ~~franchise, afford a video service provider full due process that, at a minimum, must~~  
4 ~~include a proceeding before a hearing officer during which the video service provider~~  
5 ~~must be afforded the opportunity for full participation, including the right to be~~  
6 ~~represented by counsel, to introduce evidence, to require the production of evidence,~~  
7 ~~and to question or cross-examine witnesses under oath. A transcript shall be made~~  
8 ~~of any such hearing. A video service provider may bring an action to appeal the~~  
9 ~~decision of the department~~ exhibited a pattern of noncompliance with one or more  
10 requirements or prohibitions under this section, s. 100.20 or 100.209, or 47 CFR  
11 76.309, 76.1602, 76.1603, or 76.1619. A revocation is a contested case under ch. 227.

12 **SECTION 20.** 66.0420 (3) (i) 1. to 3. of the statutes are created to read:

13 66.0420 (3) (i) 1. A video service provider shall apply to the commission to  
14 renew its video service franchise every 10 years. The commission may not renew a  
15 video service franchise if the commission determines that the applicant exhibited a  
16 pattern of noncompliance with one or more requirements or prohibitions under this  
17 section, s. 100.20 or 100.209, or 47 CFR 76.309, 76.1602, 76.1603, or 76.1619.

18 2. If the commission does not renew the video service franchise of an applicant  
19 for renewal, the commission shall notify the applicant and state the reasons for not  
20 renewing the video service franchise. The video service franchise shall terminate on  
21 the date specified in the notification.

22 3. If a video service provider gives at least 30 days' advance notice to the  
23 commission that the video service provider intends to terminate the video service  
24 franchise, the video service franchise shall expire on the termination date specified  
25 in the notice.

**BILL**

**SECTION 21.** 66.0420 (3) (j) of the statutes is amended to read:

66.0420 (3) (j) *Modifications.* If there is any change in the information included in an application filed by a video service provider under this subsection, the video service provider shall notify the ~~department~~ commission and update the information within 10 business days after the change, except that if the video service provider determines to expand the area or areas of the state in which the video service provider intends to provide video service, the video service provider shall apply to the ~~department~~ commission for a modified video service franchise under par. (d). ~~A video service provider that makes a notification regarding a change in the information specified in par. (d) 3., 4., or 5., shall include with the notification a fee of \$100. No fee is required for a notification regarding a change in the information specified in par. (d) 1.~~

**SECTION 22.** 66.0420 (3) (k) of the statutes is repealed and recreated to read:

66.0420 (3) (k) *Annual fees.* Upon issuance of a video service franchise to a video service provider, and annually thereafter, a video service provider with more than 10,000 in-state subscribers shall pay a fee of \$50,000, and a video service provider with 10,000 or less in-state subscribers shall pay a fee of \$4,500, to the department of agriculture, trade and consumer protection, except that the department may, by rule, adjust the amount of a fee as necessary to cover the department's costs in administering and enforcing sub. (8) and s. 100.209.

**SECTION 23.** 66.0420 (3) (L) of the statutes is created to read:

66.0420 (3) (L) *Commission expenses.* The commission shall bill under s. 196.85 (1) an applicant for a video service franchise or a video service provider any expense incurred by the commission with respect to an application or any other



**BILL****SECTION 23**

1 matter under the commission's jurisdiction regarding the applicant or video service  
2 provider.

3 **SECTION 24.** 66.0420 (5) (b) 2. of the statutes is amended to read:

4 66.0420 (5) (b) 2. Notwithstanding par. (a), if a municipality fails to provide the  
5 notice specified in sub. (3) (e) 2. before the deadline specified in sub. (3) (e) 2., no  
6 interim cable operator or video service provider is required to provide channel  
7 capacity for any PEG channel, or monetary support for access facilities for PEG  
8 channels pursuant to sub. (7) (em) 1. to 4., until the 90th day after the municipality  
9 provides such notice.

10 **SECTION 25.** 66.0420 (5) (c) 3. a. of the statutes is repealed and recreated to  
11 read:

12 66.0420 (5) (c) 3. a. If a municipality produces or maintains PEG channel  
13 programming in a manner or form that is compatible with the interim cable  
14 operator's or video service provider's video service network and that permits the  
15 interim cable operator or video service provider to comply with the requirements of  
16 par. (d) 3., the municipality shall transmit the programming to the interim cable  
17 operator or video service provider in that manner or form. If the municipality does  
18 not produce or maintain PEG channel programming in such manner or form, the  
19 interim cable operator or video service provider shall be responsible for any changes  
20 in the manner or form of the transmission that are necessary to make PEG channel  
21 programming compatible with the technology or protocol used by the interim cable  
22 operator or video service provider to deliver services. If an interim cable operator or  
23 video service provider is required to make such changes to the manner or form of the  
24 transmission, the municipality shall provide reasonable access to the interim cable  
25 operator or video service provider that allows the interim cable operator or video

**BILL**

1 service provider to transmit the PEG channel programming in an economical  
2 manner subject to the requirements of par. (d) 3.

3 **SECTION 26.** 66.0420 (5) (d) 3. of the statutes is created to read:

4 66.0420 (5) (d) 3. An interim cable operator or video service provider shall  
5 retransmit PEG channels to its subscribers with visual and audio quality and  
6 functionality that is equivalent, from the viewing perspective of the subscriber, to  
7 that of commercial channels carried on the interim cable operator's or video service  
8 provider's basic video service offerings or service tiers and without the need for any  
9 equipment other than the equipment necessary to receive the interim cable  
10 operator's or video service provider's basic video service offerings or service tiers.

11 **SECTION 27.** 66.0420 (5e) of the statutes is created to read:

12 66.0420 (5e) STATEWIDE PUBLIC AFFAIRS CHANNEL. A video service provider shall  
13 carry a channel designated by WisconsinEye, or a successor specified by the  
14 commission that operates a nonprofit statewide public affairs channel for  
15 nonpartisan coverage of civic and community life in the state, including state  
16 government activities in Madison, at no cost to WisconsinEye or such a successor.

17 **SECTION 28.** 66.0420 (7) (a) 1. of the statutes is amended to read:

18 66.0420 (7) (a) 1. Notwithstanding s. 66.0611 and except as provided in ~~subds.~~  
19 sub. 2. and 2m., a video service provider shall, on a quarterly calendar basis,  
20 calculate and pay to each municipality in which the video service provider provides  
21 video service a video service provider fee equal to ~~the percentage, as specified by each~~  
22 municipality, no more than 5 percent of the video service provider's gross receipts  
23 ~~that is specified in par. (b) and the monetary support for access facilities for PEG~~  
24 ~~channels described in~~ required under par. (em). A video service provider shall remit  
25 the fee to the municipality no later than 45 days after the end of each quarter. Except

**BILL****SECTION 28**

1 as provided in subd. 2. ~~or par. (b) 1.~~, if the municipality is not required to provide  
2 notice under sub. (3) (e) 2., the duty to remit the fee first applies to the quarter in  
3 which the video service provider begins to provide service in the municipality, and,  
4 if the municipality is required to provide notice under sub. (3) (e) 2., the duty to remit  
5 the fee first applies to the quarter in which the video service provider begins to  
6 provide service in the municipality or to the quarter that includes the 45th day after  
7 the video service provider receives the municipality's notice, whichever quarter is  
8 later.

9 **SECTION 29.** 66.0420 (7) (a) 2m. of the statutes is repealed.

10 **SECTION 30.** 66.0420 (7) (b) of the statutes is repealed.

11 **SECTION 31.** 66.0420 (7) (em) 4. of the statutes is amended to read:

12 66.0420 (7) (em) 4. For purposes of ~~this paragraph~~ subd. 3., the proportion of  
13 video service customers of a video service provider shall be determined based on the  
14 relative number of subscribers as of the end of the prior calendar year as reported  
15 by all incumbent cable operators and holders of video service authorizations.

16 **SECTION 32.** 66.0420 (7) (em) 5. of the statutes is created to read:

17 66.0420 (7) (em) 5. A municipality may, by ordinance, for the purpose of  
18 supporting PEG channels, require an interim cable operator or video service  
19 provider to pay the municipality, beginning on January 1, 2011, a fee equal to no more  
20 than 1 percent of the interim cable operator's or video service provider's annual gross  
21 receipts. If an interim cable operator pays a franchise fee to a municipality, the  
22 interim cable operator shall pay any fee required under this subdivision at the time  
23 that the interim cable operator pays the franchise fee to the municipality. A video  
24 service provider shall pay a fee required under this subdivision at the time that the  
25 video service provider pays a video service provider fee to the municipality.

## BILL

1 SEP 13 - 13

1 SECTION 33. 66.0420 (7) (f) of the statutes is amended to read:

2 66.0420 (7) (f) *Itemization.* A video service provider may identify and collect  
3 the amount related to a video service provider fee and any fee imposed for monetary  
4 support for access facilities for PEG channels as described in required under par.  
5 (em) as a separate line item on customer bills.

6 SECTION 34. 66.0420 (8) (e) of the statutes is amended to read:

7 66.0420 (8) (e) *Limitations.* Notwithstanding any other provision of this  
8 section, a telecommunications video service provider is not required to provide video  
9 service outside the provider's basic local exchange service area, and a video service  
10 provider that is an incumbent cable operator is not required to provide video service  
11 outside the area in which the incumbent cable operator provided cable service at the  
12 time the ~~department of financial institutions~~ commission issued a video service  
13 franchise to the incumbent cable operator.

14 SECTION 35. 66.0420 (9) (a) of the statutes is renumbered 66.0420 (9) and  
15 amended to read:

16 66.0420 (9) ~~Except as provided in par. (b), upon~~ Upon at least 90 days' advance  
17 notice, a municipality may require a video service provider to comply with the  
18 customer service standards specified in s. 100.209 or 47 CFR 76.309 (e), 76.1602,  
19 76.1603, or 76.1619, in its provision of video service. Neither the ~~department~~  
20 commission nor any municipality shall have the authority to impose additional or  
21 different customer service standards that are specific to the provision of video  
22 service.

23 SECTION 36. 66.0420 (9) ~~of~~ of the statutes is repealed.

24 SECTION 37. 66.0420 (10) of the statutes is amended to read:

**BILL****SECTION 37**

1           66.0420 (10) LIMITATION ON RATE REGULATION. The ~~department~~ commission or  
2           a municipality may not regulate the rates charged for any video service by an interim  
3           cable operator or video service provider that provides video service in a municipality  
4           if at least one other interim cable operator or video service provider is providing video  
5           service in the municipality and the other interim cable operator or video service  
6           provider is not an affiliate of the interim cable operator or video service provider.  
7           This subsection applies regardless of whether any affected interim cable operator or  
8           video service provider has sought a determination from the FCC regarding effective  
9           competition under 47 CFR 76.905.

10           **SECTION 38.** 66.0420 (11) of the statutes is amended to read:

11           66.0420 (11) TRANSFER OF VIDEO SERVICE FRANCHISE. A person who is issued a  
12           video service franchise may transfer the video service franchise to any  
13           successor-in-interest, including a successor-in-interest that arises through  
14           merger, sale, assignment, restructuring, change of control, or any other transaction.  
15           No later than 15 days after the transfer is complete, the successor-in-interest shall  
16           apply for a video service franchise under sub. (3) (d) and comply with sub. (3) (e) 1.  
17           The successor-in-interest may provide video service in the video franchise area  
18           during the period that the ~~department~~ commission reviews the application.

19           **SECTION 39.** 66.0420 (13) (a) of the statutes is amended to read:

20           66.0420 (13) (a) The ~~department of financial institutions~~ commission may  
21           promulgate rules interpreting or establishing procedures for this section and the  
22           department of agriculture, trade and consumer protection may promulgate rules  
23           interpreting or establishing procedures for sub. (8).

24           **SECTION 40.** 66.0420 (13) (c) of the statutes is amended to read:

**BILL**

INSERT 15-6

1       66.0420 (13) (c) The department commission shall enforce this section, except  
2       sub. (8). The ~~department~~ commission may bring an action to recover any fees that  
3       are due and owing under this section or to enjoin a violation of this section, except  
4       sub. (8), or any rule promulgated under sub. (3) (f) 4. An action shall be commenced  
5       under this paragraph within 3 years after the occurrence of the unlawful act or  
6       practice or be barred.

7       **SECTION 41.** 100.261 (3) (c) of the statutes is amended to read:

8       100.261 (3) (c) The amount credited under par. (b) to the appropriation account  
9       under s. 20.115 (1) (jb) may not exceed \$185,000 in each fiscal year.

10       **SECTION 42.** 196.44 (1) of the statutes is amended to read:

11       196.44 (1) DUTY OF COMMISSION. The commission shall inquire into the neglect  
12       or violation of the laws of this state by public utilities and of s. 66.0420, except for s.  
13       66.0420 (8), by video service providers, or by their officers, agents or employees or by  
14       persons operating public utilities or video service providers, and shall enforce s.  
15       66.0420, except s. 66.0420 (8), and all laws relating to public utilities, and report all  
16       violations to the attorney general.

17       **SECTION 43.** 196.44 (2) of the statutes is amended to read:

18       196.44 (2) DUTIES OF ATTORNEY GENERAL AND DISTRICT ATTORNEYS. Upon request  
19       of the commission, the attorney general or the district attorney of the proper county  
20       shall aid in any investigation, hearing or trial had under this chapter, and shall  
21       institute and prosecute all necessary actions or proceedings for the enforcement of  
22       s. 66.0420, except s. 66.0420 (8), and all laws relating to public utilities or  
23       telecommunications providers, and for the punishment of all violations.

24       **SECTION 44.** 196.85 (1m) (e) of the statutes is created to read:

**BILL****SECTION 44**

1           196.85 (1m) (e) For the purpose of direct assessment under sub. (1) of expenses  
2 incurred by the commission in connection with its activities under s. 66.0420, the  
3 term "public utility" includes an applicant for a video service franchise, as defined  
4 in s. 66.0420 (2) (z), or a video service provider, as defined in s. 66.0420 (2) (zg).

**SECTION 45. Nonstatutory provisions.**

5  
6           (1) Any matter pending with the department of financial institutions on the  
7 effective date of this subsection that relates to the regulation of video service  
8 providers under section 66.0420 of the statutes is transferred to the public service  
9 commission and all materials submitted to or actions taken by the department with  
10 respect to the pending matter are considered as having been submitted to or taken  
11 by the commission.

12           (2) All rules promulgated, and all orders issued, by the department of financial  
13 institutions relating to the regulation of video service providers under section  
14 66.0420 of the statutes that are in effect on the effective date of this subsection shall  
15 become rules and orders of the public service commission and shall remain in effect  
16 until their specified expiration dates or until amended, repealed, or rescinded by the  
17 commission.

**SECTION 46. Fiscal changes.**

18  
19           (1) In the schedule under section 20.005 (3) of the statutes for the appropriation  
20 to the public service commission under section 20.155 (1) (g) of the statutes, as  
21 affected by the acts of 2009, the dollar amount is increased by \$100,000 for the first  
22 fiscal year, and the dollar amount is increased by \$100,000 for the second year, of the  
23 fiscal biennium in which this subsection takes effect for the purposes for which the  
24 appropriation is made.

# BILL

(2) In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of agriculture, trade and consumer protection under section 20.115 (1) (jb) of the statutes, as affected by the acts of 2009, the dollar amount is increased by \$325,000 for the first fiscal year, and the dollar amount is increased by \$325,000 for the second fiscal year, of the fiscal biennium in which this subsection takes effect to increase the authorized FTE positions for the department by 5.0 PR positions for the purpose of carrying out the department's duties under section 100.209 of the statutes.

(3) In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of financial institutions under section 20.144 (1) (g) of the statutes, as affected by the acts of 2009, the dollar amount is decreased by \$100,000 for the first fiscal year of the fiscal biennium in which this subsection takes effect, and the dollar amount is decreased by \$100,000 for the second fiscal year of the fiscal biennium in which this subsection takes effect, for the purposes for which the appropriation is made.

**SECTION 47. Initial applicability.**

(1) The treatment of section 66.0420 (7) (a) 2m. of the statutes first applies to compensation that is paid to a municipality on the effective date of this subsection.

**(END)**

INSERT 17-18

Note



**2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0945/5ins  
MDK:.....

**INSERT 3A:**

<sup>NO</sup> authority of a municipality. Instead, the bill requires that video service providers comply with the foregoing FCC regulations, and that DATCP enforce compliance. In addition, the bill requires video service providers to comply with, and DATCP to enforce,

**INSERT 4A:**

2. Requires the PSC to promulgate rules allowing a customer to return video service equipment to a video service provider at no cost to the customer, but only if the customer returns the equipment by a deadline specified in the rules.

3. Requires a video service provider to maintain at least one customer service facility within this state. The facility staff must have the capacity to accept payments; adjust bills; respond to repair, installation, reconnection, disconnection, and other service calls; and distribute and receive video service equipment.

**INSERT 13-13:**

**SECTION 1.** 66.0420 (8g) of the statutes is created to read:

**66.0420 (8g) EQUIPMENT RETURNS.** The commission shall promulgate rules that allow a customer, at no cost to the customer, to return to a video service provider, by a deadline specified in the rules, equipment necessary for receiving video service that the video service provider has provided the customer.

**SECTION 2.** 66.0420 (8r) of the statutes is created to read:

**66.0420 (8r) CUSTOMER SERVICE CENTERS.** A video service provider shall maintain at least one customer service facility within this state that is staffed by customer service representatives with the capacity to accept payments; adjust bills; respond to repair, installation, reconnection, disconnection, and other service calls; and distribute and receive converter boxes, remote control units, digital stereo units, and other equipment necessary for receiving video service.

**INSERT 15-6:**

**SECTION 3.** 100.209 (title) of the statutes is amended to read:

**100.209 (title) Video programming service subscriber rights; customer service standards for video service providers.**

**History:** 1991 a. 296; 1995 a. 27; 1997 a. 111 s. 17; Stats. 1997 s. 100.209; 1999 a. 150 s. 672; 2007 a. 42.

**SECTION 4.** 100.209 (1) (b) of the statutes is created to read:

100.209 (1) (b) "Federal regulations" mean 47 CFR 76.309, 76.1602, 76.1603, and 76.1619.

**SECTION 5.** 100.209 (1) (c) of the statutes is amended to read:

100.209 (1) (c) "Multichannel video provider" means an interim cable operator, as defined in s. 66.0420 (2) (n), video service provider, ~~as defined in s. 66.0420 (2) (zg),~~ or multichannel video programming distributor, as defined in 47 USC 522 (13).

**History:** 1991 a. 296; 1995 a. 27; 1997 a. 111 s. 17; Stats. 1997 s. 100.209; 1999 a. 150 s. 672; 2007 a. 42.

**SECTION 6.** 100.209 (1) (e) of the statutes is created to read:

100.209 (1) (e) "Video service provider" has the meaning given in s. 66.0420 (2) (zg).

**SECTION 7.** 100.209 (2m) of the statutes is created to read:

**100.209 (2m)** CUSTOMER SERVICE STANDARDS. A video service provider, including a video service provider that is not a cable operator, shall comply with the customer service standards specified for cable operators in the federal regulations. Notwithstanding the advance written notice specified in the federal regulations, a video service provider's duty to comply with this subsection begins on the effective date of this subsection .... [LRB inserts date].

**SECTION 8.** 100.209 (3) of the statutes is amended to read:

100.209 (3) RULES AND ORDERS ALLOWED. This section does not prohibit the department from promulgating a rule or from issuing an order consistent with its

1 authority under this chapter that gives a subscriber greater rights than the rights  
2 under sub. (2) or (2m).

3 **History:** 1991 a. 296; 1995 a. 27; 1997 a. 111 s. 17; Stats. 1997 s. 100.209; 1999 a. 150 s. 672; 2007 a. 42.

3 **SECTION 9.** 100.209 (4) (a) of the statutes is amended to read:

4 100.209 (4) (a) A person who violates sub. (2) or (2m) may be required to forfeit  
5 not more than \$1,000 for each offense and not more than \$10,000 for each occurrence. <sup>Δ</sup>  
6 Failure to give a notice required under sub. (2) (c) or (d) to more than one subscriber  
7 shall be considered to be one offense.

8 **History:** 1991 a. 296; 1995 a. 27; 1997 a. 111 s. 17; Stats. 1997 s. 100.209; 1999 a. 150 s. 672; 2007 a. 42.

8 **INSERT 17-18:**

9 **SECTION 10. Effective dates.** This act takes effect on the day after publication,  
10 except as follows:

11 (1) The treatment of section 100.209 (title), (1) (b), (2m), (3) <sup>Δ</sup> and (4) of the  
12 statutes takes effect on the first day of the 4th month beginning after publication.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0945/5dn

MDK:.....

Lbjk

Date

*draft* Rep. Hebl:

This *bill* makes the changes you requested. *yy*

Note that I delayed the effective date for the customer service standards by approximately 90 days. The reason I did so is that the federal regulations that contain the standards specify that the standards apply only if a franchising authority gives 90 days' advance written notice to a cable operator. Therefore, I delayed the *bill* by approximately 90 days to give video service providers advance notice that is comparable to the notice specified in the regulations. As a result, DATCP can enforce the standards without giving any prior written notice. Is that okay?

Please contact me if you have questions or additional drafting instructions.

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.wisconsin.gov

*draft*

*hyphen*

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0945/5dn  
MDK:bjk:md

June 24, 2009

Rep. Hebl:

This draft makes the changes you requested.

Note that I delayed the effective date for the customer service standards by approximately 90 days. The reason I did so is that the federal regulations that contain the standards specify that the standards apply only if a franchising authority gives 90-days' advance written notice to a cable operator. Therefore, I delayed the draft by approximately 90 days to give video service providers advance notice that is comparable to the notice specified in the regulations. As a result, DATCP can enforce the standards without giving any prior written notice. Is that okay?

Please contact me if you have questions or additional drafting instructions.

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: [mark.kunkel@legis.wisconsin.gov](mailto:mark.kunkel@legis.wisconsin.gov)

## Kunkel, Mark

---

**Subject:** Cable Bill Drafting  
**Location:** 120 North State Capitol, Hebl Office

**Start:** Mon 07/20/2009 3:00 PM  
**End:** Mon 07/20/2009 4:00 PM  
**Show Time As:** Tentative

**Recurrence:** (none)

**Meeting Status:** Not yet responded

**Required Attendees:** Lovell, David; Kunkel, Mark

Hi David and Mark,

I did end up coming in to work today, so I was wondering if you would be available to meet this afternoon. I have drawn



WAPC suggested  
language for He...



Cable Repair-  
DATCP Memo- 6-23..

up the attached document to help guide the discussion. Also attached are memos from  
DATCP and the Wi Association of PEG channels that provide some suggestions, as background info.

If 3pm doesn't work for you, feel free to propose a different time. I'm pretty free this afternoon, but we are having a  
constituent coming in with Gary around 2:20 for the veteran bill signing event.

Thank you for your help, see you soon,  
Kate

**Date: July 16, 2009**

**To: Representative Gary Hebl**

**From: Mary Cardona, Executive Director, WAPC**

**Re: Suggested changes to LRB-0945/5**

The changes suggested strengthen language protecting PEG. Thank you for this opportunity. If you have any questions, please contact me at 608-215-5594.

**(5) (c) 3. a.**

*Revise draft language as follows:*

If a municipality produces or maintains PEG channel content and programming in a manner or form that is compatible with the interim cable operator's or video service provider's video service network and that permits the interim cable operator or video service provider to comply with the requirements of par. (d) 3., the municipality shall ~~transmit~~ submit the content and programming to the interim cable operator or video service provider in that manner or form (to allow the interim cable operator or video service provider to transmit it). If the municipality does not produce or maintain PEG channel content and programming in such manner or form, the interim cable operator or video service provider shall be responsible at its sole cost for any changes ~~in the manner or form of the transmission that are~~ necessary to make PEG channel content and programming compatible with the technology or protocol used by the interim cable operator or video service provider to deliver services. If an interim cable operator or video service provider is required to make such changes to the manner or form of the transmission, the municipality shall provide reasonable access to the interim cable operator or video service provider that allows the interim cable operator or video service provider to transmit the PEG channel programming in an economical manner subject to the requirements of par. (d) 3.

**(5)(d) Duties of interim cable providers and video service providers.**

**(5) (d) (1)**

*Revise draft language as follows:*

If a municipality requires an interim cable operator or video service provider to provide capacity for PEG channels under par. (a), the interim cable operator or video service

provider shall be required to provide equipment and transmission capacity sufficient to connect the interim cable operator's or video service provider's headend or video hub office to the municipality's PEG access channel origination points existing as of the effective date of this subdivision. A municipality shall permit the interim cable operator or video service provider to determine the most economically and technologically efficient means of providing such transmission capacity. If a municipality requests that such a PEG access channel origination point be relocated, the interim cable operator or video service provider shall be required to provide only the first 200 feet of transmission line beginning with the origination point that is necessary to connect to the interim cable operator or video service provider's nearest headend or video hub office to such ~~origination point~~ transmission facilities in the right-of-way. A municipality shall be liable for the costs of construction of such a transmission line beyond the first 200 feet to ~~transmission facilities in the right-of-way~~ and for any construction costs associated with additional origination points to transmission facilities in the right-of-way, but not for the costs associated with the transmission of PEG programming over such line. The interim cable operator or video service provider may recover its costs to provide transmission capacity under this subdivision by identifying and collecting a "PEG Transport Fee" as a separate line item on customer bills.

*the orig pt*  
*for the op*  
*he, who'll*

**5(d) 3.** (page 11 lines 7 – 13)

*Replace all draft language with the following:*

a. If a municipality requires an interim cable operator or video service provider to provide channel capacity for PEG channels, such channel capacity shall be—

(A) at least equivalent in quality, accessibility, functionality, and placement to—

(i) channel capacity used for required carriage of local commercial television stations, as defined in 47 U.S.C. 534 (h)(1));

or



(ii) if no such stations are required to be carried, the channel capacity used to carry the primary signal of the network-affiliated commercial television stations carried on the video service network, and

(B) provided to and viewable by every subscriber of a video service without additional service or equipment charges.

b. An interim cable operator or video service provider shall provide facilities adequate to carry signals for public, educational or governmental use from the point of origin of such signals to subscribers without material degradation, and without altering or removing content provided as part of the public, educational or governmental use.

shall transmit  
w/o material  
degradation  
or remove  
content

66.0420 (7) (a) 1.

Page 11, Line 24 & 25:

*Reorder language changes and add to these two lines as follows:*

...video service, a video service provider fee ~~equal to the percentage, as specified~~  
by ordinance by each municipality, equal to no more than 5 percent of the video  
service provider's gross receipts...

OR (standardizing a 5% franchise fee)

...video service, a video service provider fee equal to 5 percent of the video  
service provider's gross receipts...

**DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION**

**Memorandum**

**Office of Legal Counsel**

Date: June 23, 2009

To: Janet Jenkins, Administrator, Division of Trade and Consumer Protection

From: David Ghilardi, Assistant Legal Counsel

Re: Proposed bill amending video service provider law

I have reviewed the proposed bill that would amend portions of Wis. Stat. § 66.0420 which currently regulates video service providers. I see two important issues which may be resolved by amendments to the proposed bill.

**ISSUE 1**

Under the proposed bill, a pattern of noncompliance by the video service provider with certain listed state and federal consumer protection laws may form the basis for an action to deny or revoke the video service provider's franchise. This list fails to include equally important consumer protection statutes in Wis. Stat. ch. 100 and does not make it clear that violations of rules promulgated under § 100.20 (2) and orders issued under § 100.20 (3) are included.

Under sections 19 and 20 of the proposed bill, the commission may deny an applicant or revoke a franchisee if it determines that the applicant has **“exhibited a pattern of noncompliance with one or more requirements or prohibitions under this section, s. 100.20 or 100.209, or 47 CFR 76.309, 76.1602, 76.1603, or 76.1619”** where:

- Section 100.20 prohibits unfair trade practices.
- Section 100.209 provides video programming service subscriber rights.
- 47 CFR 76.309 allows franchise authorities to require video programming service providers to meet requirements for access to customer service.
- 47 CFR 76.1602 allows franchising authorities to require video programming service providers to meet requirements for notifying subscribers of the terms and conditions of service agreements.
- 47 CFR 76.1603 allows franchising authorities to require video programming service providers to meet requirements for notifying subscribers of changes to the terms and conditions of service agreements.
- 47 CFR 76.1619 requires bills to bills submitted by video service providers to its customers to be “clear, concise and understandable,” among other things.

The proposed bill should authorize the commission to deny or revoke for noncompliance with any of the consumer protection laws in ch. 100, a rule promulgated under § 100.20 (2), or an order issued under § 100.20 (3). Among the things, this would include § 100.18, Fraudulent

representations; § 100.195, Unfair billing for consumer goods or services; and § 100.52, Telephone solicitation (No Call).

*Although television services are exempt from § 100.195, it has been an industry-wide practice for electronic communications providers to use their billing relationship with their subscribers to serve as a billing agent for outside vendors selling unrelated goods and services. If a video service provider bills its subscribers for unrelated goods and services, it becomes a "seller" within the meaning of § 100.195 and is not exempt as it relates to that activity.*

Under the proposed bill, the commission may ignore violations of ch. 100 (other than § 100.20 or 100.209). By specifying all applicable consumer protections laws under ch. 100, the legislature would remove the commission's discretion to ignore violations of important consumer protection laws and emphasize the franchisee's duty to comply with all laws and rules of the marketplace.

I recommend that the applicable language in sections 19 and 20 be changed to say that the commission may deny an applicant or revoke a franchisee if it determines that the applicant has **"exhibited a pattern of noncompliance with one or more requirements or prohibitions under this section, any provision of ch. 100, any rule promulgated under s. 100.20 (2), any order issued under s. 100.20 (3), or 47 CFR 76.309, 76.1602, 76.1603, or 76.1619."**

## ISSUE 2

why limit rules to orders to 100.20 (2) & (3)

The proposed bill continues to provide no enforcement authority behind the § 66.0420 (8) which prohibits discrimination based on race or income when providing access to services, and requires video service providers to provide access to services in a way that avoids discrimination based on income.

The department is required to administer this section and has written rules interpreting it, and setting procedural guidelines. But neither the department nor the DFI have any authority to enforce its provisions. The only enforcement possibility is an action by a municipality or by another video service provider "to enforce this section." The law does not specify injunctive authority in the courts and not otherwise make it clear what authority the court has to require the video service providers to comply with the provisions of the section. In any case, no costs may be awarded to any parties as a result of such an action.

As it stands, a video service provider's incentive to meet the requirements of § 66.0420 (8) or the procedural rules promulgated by the department is that the video service provider may obtain a defense to an action by a municipality or other video service provider for failing to meet the requirements of the subsection. The possibility that a municipality or competitor may file an action to enforce subsection (8) is so remote, with the possibility of a successful action even more remote, that this incentive is all but meaningless.

To create an incentive forceful enough to encourage compliance with subsection (8), I believe the department must have the authority to bring an action to enforce subsection (8) and the rules promulgated under its authority by inserting the following language (in **bold**):

**Section 40.** 66.0420 (13 (c) ) of the statutes is amended to read:

66.0420 (13) (c) The ~~department~~ commission shall enforce this section, except sub.(8). The ~~department~~ commission may bring an action to recover any fees that are due and owing under this section or to enjoin a violation of this section, except sub.(8), or any rule promulgated under sub. (3)(f)4. **The department of agriculture, trade and consumer protection may bring an action to enjoin a violation of sub.(8) or any rule interpreting or establishing procedures under sub. (8).** An action **to recover fees** shall be commenced under this paragraph within 3 years after the occurrence of the unlawful act or practice or be barred.

new fl for  
DARTCP  
- anything else is  
an '00 needed  
or put in an '00?

## Cable Bill Draft #6 Drafting Instructions

### DATCP:

- Under sections 19 and 20, please insert the following changes:
  - “exhibited a pattern of noncompliance with one or more requirements or prohibitions under this section, any provision of ch. 100, any rule promulgated under s. 100.20 (2), any order issued under s. 100.20 (3), or 47 CFR 76.309, 76.1602, 76.1603, or 76.1619.”
- Give DATCP the explicit authority to enforce 66.0420(8) (e.g. allow DATCP to bring an operator to court)
- QUESTION: Regarding section 47, does this allow DATCP to make rules to enforce 100.209 (2) and (2m)?

### PEG:

- Under section 25 please specify “content” as well as “programming” and please use “provide the content” instead of “transmit the content” (please see WAPC memo and provide comments)
- Under 66.0420 (5)(d)(1) please specify that the cable operator must provide the first 200 feet of transmission line “beginning with the origination point” and specify “transmission facilities in the right of way” in addition to the nearest headend or video hub office.
- In section 26, add accessibility and placement to first sentence. (Please see WAPC memo for more detail)

### CWA:

Renewal every 5 years

Large telecommunication franchisee must provide access to 90 percent of households within service area within 18 months, or pay a sum of 20 million to the PSC for grants

- QUESTION: Is the service area the whole state?
- QUESTION: I noticed that somewhere in 100.209 there was a provision regarding cable outages being fixed within 72 hours. Thoughts on changing this down to 24 hours? Feasibility? Enforcement?

### ENFORCEMENT:

Allow parties to recover court costs (repeal last sentence of 66.0420 (7)(e)2 and (13)(b) and any others that bar recovery of costs)

Repeal and recreate 66.0420(9) and specify that a municipality may adopt and enforce an ordinance consistent with 100.209 and the rules adopted by DATCP regarding 100.209

Allow penalty enforcement for PEG provisions, not more than \$1,000 for each offense and not more than \$10,000 for each occurrence

QUESTION: In 66.0420 (13) it specifies that the DFI and DATCP can promulgate rules interpreting or establishing procedures under their respective sections. Does this mean they cannot establish rules to enforce the law? If not, can you change it so that PSC and DATCP can write rules to enforce?

contact grant program

100.209  
change to 24 hours

also allow  
municipalities  
to get  
costs for  
enforcing  
an ordinance  
under  
Sub (a)

most  
all are costs

add  
penalties  
for all  
of section

- any law necessary?

## Cable Bill Draft #6 Drafting Instructions

- QUESTION: Under 66.0420 (13)(b) it says the court can order compliance with this section, but doesn't mention the awarding of damages. Is it necessary to specify that damages can be awarded? What does it mean to be awarded damages? What does "liquidated damages provisions assessed on a daily basis" mean?

Don't add

FROM SENATE SUBSTITUTE AMENDMENT 1

✓  
(h) *Broadband service.* 1. If a large telecommunications video service franchisee does not provide access to broadband service to 90 percent of the households in the large telecommunications video service franchisee's telecommunications service area by the first day of the 18th month beginning after the effective date of this subdivision .... [revisor inserts date], the large telecommunications video service franchisee shall pay to the commission, no later than the first day of the 19th month beginning after the effective date of this subdivision .... [revisor inserts date], a sum of ~~\$7,500,000.~~ 20,000,000.

2. If a large telecommunications video service franchisee pays the sum to the commission under subd. 1., the commission shall use that sum to make grants to persons to assist in the deployment of broadband service to underserved areas in this state. The commission shall promulgate rules establishing requirements and procedures for making the grants.

## Kunkel, Mark

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**From:** Lovell, David  
**Sent:** Tuesday, July 21, 2009 10:01 AM  
**To:** Battiato, Kate  
**Cc:** Kunkel, Mark  
**Subject:** Illinois video law -- PEG provisions

**Attachments:** 2920\_001.pdf

Kate,

As promised, attached is a scan of the portion of the Illinois video law (Public Act 095-0009) that deals with PEG channels. The language you were specifically interested in, I think, was that relating to quality of signal transmission -- it is in par (c), on the second page of this excerpt.

David

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David L. Lovell, Senior Analyst  
Wisconsin Legislative Council Staff  
608/266-1537

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**From:** network.scanning@legis.wisconsin.gov [<mailto:network.scanning@legis.wisconsin.gov>]  
**Sent:** Tuesday, July 21, 2009 9:58 AM  
**To:** Lovell, David  
**Subject:** Attached Image



2920\_001.pdf (301 KB)



for a holder to discriminate against potential residential subscribers because of the race or income of the residents in the local area in which the group resides by terminating or modifying its cable service or video service area footprint. It shall be a violation of this Article for a holder to terminate or modify its cable service or video service area footprint if it leaves an area with no cable service or video service from any provider.

(h) The Commission's authority to administer this Article is limited to the powers and duties explicitly provided under this Article. Its authority under this Article does not include or limit the powers and duties that the Commission has under the other Articles of the Public Utilities Act, the Illinois Administrative Procedure Act (5 ILCS 100/) or any other law or regulation to conduct proceedings other than as provided in subsection (c) above, or to promulgate rules or regulations. The Commission shall not have the authority to limit or expand the obligations and requirements provided in this Section, or to regulate or control a person or entity to the extent that person or entity is providing cable service or video service

except as provided in this Article.

(220 ILCS 5/21-601 new)

Sec. 21-601. Public, education, and government access. For the purposes of this Section, "programming" means content produced or provided by any person, group, governmental agency, or noncommercial public or private agency or organization.

(a) Not later than 90 days after a request by the local unit of government or its designee that has received notice under Section 21-801(a) of this Article, the holder shall (i) designate the same amount of capacity on its network to provide for public, education, and government access use, as the incumbent cable operator is required to designate under its franchise terms in effect with a local unit of government on January 1, 2007; and (ii) retransmit to its subscribers the same number of public, education, and government access channels as the incumbent cable operator was retransmitting to subscribers on January 1, 2007.

(b) If the local unit of government produces or maintains the public education or government programming in a manner or form that is compatible with the holder's network, it shall transmit such programming to the holder in that form provided that form will permit the holder to satisfy the requirements of Section 21-601(c). If the local unit of government does not produce or maintain such programming in that manner or form, then the holder shall be responsible for any changes in the

form of the transmission necessary to make public, education,

and government programming compatible with the technology or protocol used by the holder to deliver services. The holder shall receive programming from the local unit of government (or the local unit of government's public, education, and government programming providers) and transmit that public, education, and government programming directly to the holder's subscribers within the local unit of government's jurisdiction at no cost to the local unit of government or the public, education, and government programming providers. If the holder is required to change the form of the transmission, the local unit of government or its designee shall provide reasonable access to the holder to allow the holder to transmit the public, education, and government programming in an economical manner subject to the requirements of Section 21-601(c).

(c) The holder shall provide to subscribers public, education and government access channel capacity at equivalent visual and audio quality and equivalent functionality, from the viewing perspective of the subscriber, to that of commercial channels carried on the holder's basic cable or video service offerings or tiers without the need for any equipment other than the equipment necessary to receive the holder's basic cable or video service offerings or tiers.

(d) The holder and an incumbent cable operator shall negotiate in good faith to interconnect their networks, if needed, for the purpose of providing public, education, and

government programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. The holder and the incumbent cable operator shall provide interconnection of the public, education, and government channels on reasonable terms and conditions and may not withhold the interconnection. If a holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, the local unit of government may require the incumbent cable operator to allow the holder to interconnect its network with the incumbent cable operator's network at a technically feasible point on their networks. If no technically feasible point for interconnection is available, the holder and an incumbent cable operator shall each make an interconnection available to the public, education, and government channel originators at their local origination points and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the holder unless otherwise agreed to by the parties. The interconnection required by this subsection shall be completed within the 90-day deadline set forth in subsection (a).

(e) The public, education, and government channels shall be for the exclusive use of the local unit of government or its

designee to provide public, education, and government programming. The public, education, and government channels shall be used only for noncommercial purposes. However,

advertising, underwriting, or sponsorship recognition may be carried on the channels for the purpose of funding public, education, and government access related activities.

(f) Public, education and government channels shall all be carried on the holder's basic cable or video service offerings or tiers. To the extent feasible, the public, education and government channels shall not be separated numerically from other channels carried on the holder's basic cable or video service offerings or tiers, and the channel numbers for the public, education and government channels shall be the same channel numbers used by the incumbent cable operator unless prohibited by federal law. After the initial designation of public, education and government channel numbers, the channel numbers shall not be changed without the agreement of the local unit of government or the entity to which the local unit of government has assigned responsibility for managing public, education and government access channels unless the change is required by federal law. Each channel shall be capable of carrying a National Television System Committee (NTSC) television signal.

(g) The holder shall provide a listing of public, education and government channels on channel cards and menus provided to subscribers in a manner equivalent to other channels if the holder uses such cards and menus. Further, the holder shall provide a listing of public, education, and government programming on its electronic program guide if such a guide is

utilized by the holder. It is the public, education and government entity's responsibility to provide the holder or its designated agent, as determined by the holder, with program schedules and information in a timely manner.

(h) If less than three public, education, and government channels are provided within the local unit of government as of January 1, 2007, a local unit of government whose jurisdiction lies within the authorized service area of the holder may initially request the holder to designate sufficient capacity for up to three public, education, and government channels. A local unit of government or its designee that seeks to add additional capacity shall give the holder a written notification specifying the number of additional channels to be used, specifying the number of channels in actual use, and verifying that the additional channels requested will be put into actual use.

(i) The holder shall, within 90 days of a request by the local unit of government or its designated public, education,

or government access entity, provide sufficient capacity for an additional channel for public, education, and government access when the programming on a given access channel exceeds 40 hours per week as measured on a quarterly basis. The additional channel shall not be used for any purpose other than for carrying additional public, education, or government access programming.

(j) The public, education, and government access

programmer is solely responsible for the content that it provides over designated public, education, or government channels. A holder shall not exercise any editorial control over any programming on any channel designed for public, education, or government use or on any other channel required by law or a binding agreement with the local unit of government.

(k) A holder shall not be subject to any civil or criminal liability for any program carried on any channel designated for public, education, or government use.

(l) A court of competent jurisdiction shall have exclusive jurisdiction to enforce any requirement under this Section or resolve any dispute regarding the requirements set forth in this Section, and no provider of cable service or video service may be barred from providing service or be required to terminate service as a result of that dispute or enforcement action.

(220 ILCS 5/21-701 new)

Sec. 21-701. Emergency alert system. The holder shall comply with all applicable requirements of the Federal Communications Commission involving the distribution and notification of federal, State, and local emergency messages over the emergency alert system applicable to cable operators. The holder will provide a requesting local unit of government with sufficient information regarding how to submit, via

telephone or web listing, a local emergency alert for distribution over its cable or video network. To the extent that a local unit of government requires incumbent cable operators to provide emergency alert system messages or services in excess of the requirements of this Section, the holder shall comply with any such additional requirements within the jurisdiction of the local franchising authority. The holder may provide a local emergency alert to an area larger than the boundaries of the local unit of government issuing the emergency alert.

(220 ILCS 5/21-801 new)

Sec. 21-801. Applicable fees payable to the local unit of government.

Kunkel, Mark

From: Sundberg, Christopher  
Sent: Thursday, July 30, 2009 10:00 AM  
To: Kunkel, Mark  
Subject: RE: Video service franchise bill -- 2 DATCP questions

Rep Hebl

(Kato Bottal)

266-7678

I agree that "any provision of ch. 100 or any rule or order issued under ch. 100" should work, but DATCP often seems to ask for specific for reasons that I don't understand. I'd give them what they want, but do a d-note pointing out the arguable limitation.

On the second question, I don't think it's necessary to connect DATCP's role in the video service franchise law to chapter 100, as long as ch. 66 spells out the correct penalty. However, there are some things in ch. 100 that DATCP might want to have available in enforcing its bit of ch. 66, like a consumer protection surcharge, a provision for steeper penalties when a violation involves an elderly or disabled victim. If you really wanted to connect the dots, I guess you could x-ref ch. 66 somewhere in s. 93.06 (DATCP powers) or 93.07 (DATCP duties), but it doesn't seem necessary.

From: Kunkel, Mark  
Sent: Wednesday, July 29, 2009 3:22 PM  
To: Sundberg, Christopher  
Subject: Video service franchise bill -- 2 DATCP questions

Chris,

I'm revising a bill dealing with video service franchises, which is the regulatory scheme created last session to deal with cable TV operators, as well as new entrants to the market such as AT&T that aren't traditional cable TV operators.

DATCP had some comments and I'm trying to incorporate them into the bill. I think I need your input on responding to DATCP.

#### Question 1:

The bill contains the following: "The [PSC] may not renew a video service franchise if the PSC determines that the applicant exhibited a pattern of noncompliance with one or more requirements or prohibitions **under** this section, **s. 100.20 or 100.209**, or 47 CFR 76.309, 76.1602, 76.1603, or 76.1619."

DATCP wants to substitute the following for the boldfaced language: any provision of ch. 100, any rule promulgated under s. 100.20 (2), any order issued under s. 100.20 (3).

Shouldn't I instead simplify the new language as follows: any provision of ch. 100 or any rule or order issued under ch. 100? Alternatively, if they want what they want, is what they want okay? Or is not okay because you could read their language to say that only rules under s. 100.20 (2) and orders under s. 100.20 (3) are pertinent. Any rule or order under any other provision of ch. 100 is not pertinent, even though the provision is itself pertinent. Which is confusing. And now I'm confused. What do you think?

#### Question 2:

Under current law, DFI enforces s. 66.0420 (the video service franchise law), except for s. 66.0420 (8), which prohibits some discrimination in providing service, and requires franchisees to build out their systems by specified deadlines. DATCP (rather than DFI) can grant extensions for the build out deadlines. However, current law does not specify that DATCP must enforce s. 66.0420 (8), which is probably a drafting error. Here's how DATCP wants to change current law to give themselves enforcement authority over s. 66.0420 (8):

66.0420 (13) (c) is amended as follows: "[DFI] shall enforce this section, except sub. (8). [DFI] may bring an action to recover any fees that are due and owing under this section or to enjoin a violation of this section, except sub. (8), or any rule promulgated under sub. (3) (f) 4. [DATCP] may bring an action to enjoin a violation of sub. (8) or any rule interpreting or establishing procedures under sub. (8). An action to recover fees shall be commenced under this paragraph within 3 years after the occurrence of the unlawful act or practice or be barred."

My question to you is whether the above works. Or should DATCP's authority be expressed somewhere in ch. 100 with a cross reference to s. 66.0420 (8)? Or is there some authority expressed in ch. 100 that I should cross reference in s.

66.0420 (13) (c)?

Thanks,

-- Mark